

VZCZCXRO5134  
OO RUEHDBU RUEHFL RUEHKW RUEHLA RUEHROV RUEHSR  
DE RUEHRL #3173/01 3041206  
ZNY CCCCC ZZH  
O 311206Z OCT 06  
FM AMEMBASSY BERLIN  
TO RUEAHLA/DEPT OF HOMELAND SECURITY WASHDC IMMEDIATE  
RUEFHLC/HOMELAND SECURITY CENTER WASHINGTON DC IMMEDIATE  
RUEHC/SECSTATE WASHDC IMMEDIATE 5899  
RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE  
INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE IMMEDIATE  
RUCNFRG/FRG COLLECTIVE IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 03 BERLIN 003173

SIPDIS

SIPDIS

DHS FOR A/S STEWART BAKER

E.O. 12958: DECL: 10/31/2016  
TAGS: [KHLS](#) [PGOV](#) [PTER](#) [PREL](#) [EAIR](#) [GM](#) [EU](#)  
SUBJECT: DHS A/S BAKER ENGAGES ON PNR, SEEKS GREATER CT  
INFO SHARING

REF: BERLIN 2785

Classified By: Minister-Counselor for Economic Affairs Robert F. Cekuta  
for Reasons 1.4 (b) and (d)

11. (C) Summary. Department of Homeland Security Assistant  
Secretary for Policy Stewart Baker urged greater bilateral

SIPDIS  
biographic and biometric information sharing and explained  
U.S. objections to the recent U.S.-EU Passenger Name Records  
(PNR) agreement. A/S Baker urged Germany to accept an early  
November U.S. delegation to discuss which parts of the Pruem  
agreement the United States wanted to use as a basis for a  
bilateral agreement to step up our fight against terrorism;  
senior Interior Ministry interlocutors reiterated their  
interest but sought a written U.S. statement to begin the  
process. On PNR, German interlocutors appeared to lament  
they would need to be intensively engaged in managing the  
issue due to their assuming the EU Presidency in the first  
half of 2007. A/S Baker resisted senior German calls to  
simply extend the interim agreement. He also highlighted how  
PNR data had helped DHS intercept terrorists while the  
agreement's limitations had prevented U.S. agencies from  
acting to prevent the travel of other suspects. End Summary.

12. (SBU) In Berlin on October 18 and 19, A/S Baker met with:  
- Ministry of the Interior (MOI) State Secretary August  
Hanning,  
- MOI Director General for Police and Counterterrorism  
Guenter Krause,  
- MOI Director General for the Federal Police (former Border  
Police) Ruediger Kass,  
- Ministry of Justice State Secretary Lutz Diwell,  
- Chancellery Federal Intelligence Coordinator Klaus-Dieter  
Fritsche, and  
- Federal Data Privacy and Freedom of Information  
Commissioner Peter Schaar.  
Assistant Secretary Baker also received a briefing at the  
German Joint Interagency Counterterrorism Center (GTAZ) and  
met with a small group of German journalists.

-----  
EXPANDED INFORMATION SHARING  
-----

13. (C) Ministry of the Interior State Secretary Hanning said  
Germany is prepared for broader counterterrorism information  
sharing, including biometric and biographic information,  
following the recent visit of Minister Schaeuble to  
Washington (ref A) and meetings with U.S. Department of  
Justice officials October 12. A/S Baker said an interagency

delegation is ready to visit Berlin November 7-8 to begin discussions on what parts of the Pruem agreement might be fruitful for the U.S. to pursue with Germany as a prelude to an agreement with the Pruem group of EU countries. Concerning fingerprints specifically, A/S Baker noted the two distinct U.S. systems -- the U.S. VISIT system used at ports of entry, which has a very fast response time, and the other more traditional system used by U.S. law enforcement. DG Krause said the more an eventual U.S.-German agreement looked like the Pruem text -- especially its data privacy provisions -- the easier it would be to get through the German Bundestag. Krause added the texts need not be identical, but he urged the U.S. side to study Pruem in detail and to send a written response noting which areas the U.S. seeks to pursue with Germany.

¶4. (C) Krause noted that any EU Framework Decision on data protection in the area of law enforcement and public security should be limited to broad principles. More specific details should be covered through separate arrangements based on the requirements of the system or relationship in question.

¶5. (C) Federal Intelligence Coordinator Fritsche said Germany needs not just "more information sharing than ever" but new data sources. He observed that German authorities never before performed background checks on those writing formal invitations and guarantees for foreign students to obtain German visas. The investigation after the summer 2006 failed train bombings revealed Islamist radicals in Germany had invited to Germany other individuals who had been involved in the bomb plot. Germany has now closed this loophole, Fritsche said. A/S Baker responded terror plots could be unraveled by sharing information and gave as an example the UK aircraft bombing plot. The U.S. and EU should both be interested in which of their nationals and residents are flying to and from Pakistan, for example, whether they

BERLIN 00003173 002 OF 003

originally boarded flights from the U.S. or EU region or not.

¶6. (C) Ministry of the Interior DG for the Federal Police Kass told A/S Baker that after the failed train bomb plot, Germany needs new measures to provide security and Kass looks to technology -- facial recognition, iris scanning, and fingerprints -- to help. Kass noted his desire to make progress on a U.S.-Germany International Registered Traveler concept and offered to meet either in Berlin or Washington to advance this issue. He also asked about technology that could identify people and objects behaving suspiciously, e.g., people on a train platform with a certain suitcase at one moment, and without it later.

-----  
PASSENGER NAME RECORDS (PNR)  
-----

¶7. (C) Both MOI State Secretary Hanning and DG Krause suggested to A/S Baker the U.S. and EU should simply extend the interim PNR agreement. All officials noted that the MOI would have lead on this issue for the GOG. Krause wondered if an ICAO- or IATA-wide agreement might not be a better alternative. A/S Baker disagreed with the proposal to extend the agreement and listed several U.S. concerns, including the detailed, "code of conduct" mentality underlying the current text; the limited number of PNR fields to which U.S. agencies have access; the need to delete data before the end of its utility; the complications associated with third country sharing (A/S Baker provided examples of how this provision had impeded U.S. law enforcement efforts); and lack of reciprocity (i.e., that EU member states are not obliged to follow the same rules the U.S. must). A/S Baker noted the utility of engaging IATA and/or ICAO so long as the United States and the EU are in agreement on the principles to be promoted. After the 9/11 Commission Report, the passage of the Intelligence Reform Act and several Executive Orders, U.S. agencies are required to share information in ways that

the U.S.-EU PNR agreement seeks to inhibit. The U.S. seeks a different kind of PNR agreement, based on general principles, not a list of detailed "dos and don'ts," and more modeled on mutual legal assistance treaties, which envision the sharing of data between law enforcement agencies, and less on the data privacy rules the EU applies to the commercial sector. He offered to share with Hanning the list of principles the U.S. proposed to the EU negotiating team and urged Germany to seek from the EU a broad negotiating mandate.

¶18. (C) Both MOI interlocutors and State Secretary of Justice Diwell referred to German laws governing German law enforcement agencies, which include data privacy provisions. Hanning noted that data protection advocates are pushing in the opposite direction. Diwell said it is a fundamental EU and German position that agencies have rules that govern how they can use data, whether and when they can share it with other agencies, and that the original rules apply to any agency subsequently receiving the data. He also cautioned that all 25 EU member states would have to ratify a new U.S.-EU PNR agreement. A/S Baker warned that in many cases the actual airline databases reside in the United States, and the airlines of many EU countries do not have flights to the United States, and so in this light, from the U.S. perspective, it was difficult to see why an EU government and parliament should have any influence on the access of U.S. agencies to data in the United States. A/S Baker told both MOI interlocutors and Diwell the U.S. objections to the current interim PNR agreement were such that the U.S. preferred no deal to an extension beyond July 2007 of the current one.

¶19. (C) Fritsche asked if U.S. agencies were engaged in "sophisticated data mining" of PNR data and cautioned the trend in the EU was towards greater transparency. Travelers provided information inadvertently to airlines and travel agencies, but Fritsche was not sure Germany would be able to use those data. A/S Baker downplayed the sophistication of U.S. use of PNR data, but gave examples of their value; e.g. phone numbers had been useful to track militants and additional suspect individuals could be identified when they traveled as a group with a known extremist.

¶10. (C) Data Privacy Commissioner Peter Schaar and his staff member Hans Tischler asked A/S Baker numerous question as they read line-by-line through A/S Baker's October 11 interpretive letter on PNR to the European Commission and Presidency of the EU Council. Among Schaar's many questions:

BERLIN 00003173 003 OF 003

- Were there contradictions between the letter (which allows for broad sharing) and the agreement (which they read as more restrictive)?
- What is a "serious crime" that is "transnational in nature"?
- What is "facilitated disclosure" and would other U.S. agencies have "conditional direct access" to PNR data?
- What constitutes "comparable standards" of data protection?
- Would DHS audit the data privacy provisions of third U.S. agencies?
- Why did DHS not support a faster switch to "push" vice "pull" PNR data access?
- Would the U.S. agree to a spring 2007 joint review of U.S. implementation of the PNR agreement?
- Why did the U.S. seek access to additional data including: additional frequent flier data, sensitive data fields, and the number of articles of hand luggage?

¶11. (C) A/S Baker explained U.S. objections to the current PNR agreement and invited Schaar to send his questions in writing; Schaar explained his objections to broad inter-agency sharing and sharing with "police on the street," long data retention periods, and U.S. access to more data fields. Occasionally the two found areas of common ground: When A/S Baker asked hypothetically whether a tip that terrorists would use aircraft "this week" would be

sufficiently specific for other U.S. agencies to access and analyze PNR data, Schaar said "probably yes." Schaar noted that his "bottom line standard" is that the rules for disclosure beyond CBP should be written down in a concrete fashion. In another instance, Schaar said he was unconcerned about repeated "pushes" of PNR data, even when triggered by a U.S. request. Once you have the data, Schaar said, it did not matter to him how many more times airlines sent it. Schaar also said he had no objection to DHS acquiring information from frequent flier accounts as long as the data was among the 34 data fields listed in the agreement (a position with which Tischler did not agree.) Similarly, Schaar noted that he did not fundamentally object to temporary access to sensitive data as long as the carriers, not the United States, were responsible for "flipping the switch."

¶12. (C) As chairman of the EU Working Group of Article 29 Data Privacy Commissioners, Schaar noted that the Group was preparing a written opinion on the letter to the Council.

¶13. (U) This cable was cleared by A/S Baker.  
TIMKEN JR